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Action

OLL 85-2781

Office of Legislative Liaison

Routing Slip

TO:		ACTION	INFO
1.	D/OLL		x
2.	DD/OLL		x
3.	Admin Officer		
4.	Liaison		
	[redacted]	x	
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	SUSPENSE	18 Oct 85 Date	

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Remarks:

Action completed - no comment 10/1/85

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File: Crime

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LEGISLATIVE LIAISON
85-2781

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 20, 1985

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Central Intelligence Agency
United States Postal Service
Department of Defense

SUBJECT: Department of Justice proposed report on S. 1363, a bill to prohibit the use of the mails to send dangerous martial arts weapons.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than October 18, 1985.

Direct your questions to Gregory Jones (395-3454), of this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Karen Wilson
Adrian Curtis

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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 1363, a bill to prohibit the use of the mails to send dangerous martial arts weapons. The Department of Justice recommends enactment of this legislation if amended as suggested below.

If enacted in its present form, the bill would make it a misdemeanor offense for anyone to sell or transfer a dangerous martial arts weapon by use of the mails into a State which prohibits the manufacturing, selling, carrying or possessing of such weapons. However, certain categories of manufacturing, sale or transfer would not be prohibited if they were connected with activities of the Federal Government, of State and local governments, or of the National Guard, or they were to a person or business to whom sale or transfer was legal under the laws of the State. Dangerous martial arts weapons would be defined as throwing stars, nunchaku and fighting chains. Under current law neither the mailing nor the interstate shipment of such weapons is prohibited.

The provisions of the bill are apparently modeled after the Switchblade Knife Act, P.L. 85-623, 72 Stat. 562, with some important differences. The Switchblade Knife Act prohibits the introduction of switchblade knives into not only the mail, 18 U.S.C. § 1716(g), but also into interstate commerce, 15 U.S.C. § 1241 et seq. This bill is unlike the Switchblade Knife Act in that it does not prohibit the shipment in interstate commerce of martial arts weapons. As a consequence, if enacted in its present form, the bill would fail to achieve the stated purpose of its sponsors, i.e., preventing an individual in a State which prohibits possession of such weapons from having the weapons sent to him from outside the

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State. 1/ A company would be able, for example, lawfully to sell a throwing star to a juvenile in Massachusetts by simply sending it to the juvenile via United Parcel Service or some similar interstate carrier, rather than by mail. In order to prevent a juvenile in Massachusetts from purchasing a throwing star or other martial arts weapon from an out-of-state manufacturer or seller, the bill would have to include additional provisions, analogous to those contained in the Switchblade Knife Act, prohibiting the transfer of such weapons in interstate commerce, as well as by mail.

The bill in its current form would not prohibit the mailing of dangerous martial arts weapons to all States but only to those States which prohibit the manufacture, sale, carrying or possession of such weapons. Since the laws of the eleven States which have statutes specifically regulating these weapons differ so widely, 2/ such a limitation will make the bill, if enacted, difficult to enforce and, from the perspective of the citizen, unpredictable in its application. For example, the State of Washington prohibits the possession of martial arts weapons by students under 21 who are on elementary or secondary school grounds. 3/ Would S. 1363, if enacted, prohibit the mailing of a throwing star to a person in the State of Washington if that person is not a student or is over 21 or does not intend to take the star onto the grounds of an elementary or secondary school? New York and Oregon prohibit the possession of nunchaku with the intent to use them unlawfully. 4/ Would S. 1363 prohibit a manufacturer from mailing nunchaku to a customer in New York who intended to use them only for lawful purposes? How is the seller to know the intent of the purchaser? Moreover, many States have not regulated by statute the possession of specifically these types of weapons. Rather, courts have construed general statutes prohibiting the carrying of dangerous weapons to include, under certain circumstances, nunchaku, for example. 5/ Would it be

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1/ 131 Cong. Rec. S8850 and S8855 (daily ed. June 26, 1985) (remarks of Sens. Kennedy and Chafee).

2/ See study by the Congressional Research Service, "State Regulation of Certain Martial Arts Implements" reprinted in 131 Cong. Rec. S8851 (daily ed. June 26, 1985).

3/ Wash. Rev. Code Ann. (Supp. 1985) § 9.41.280.

4/ N.Y. Pen. Law (McKinney, 1984-1985) § 265.01; Or. Rev. Stat. (Supp. 1981) § 166.220.

5/ See, for example, In re S.P., 465 A.2d 823 (D.C.App. 1983) (twirling a nunchaku around one's body in the midst of a crowd of onlookers constitutes carrying a dangerous weapon).

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an offense to mail such a weapon into a State which may have, by case law only, prohibited its possession under certain limited circumstances?

It would be more effective and more predictable in application to avoid these problems by simply amending the Switchblade Knife Act to include dangerous martial arts weapons as defined in S. 1363. The introduction of such weapons into the mails or into interstate commerce would then be prohibited regardless of destination. However, such an approach would still allow a State, if it chose, to decide under what circumstances possession of these implements within the State would be lawful, provided the weapons were manufactured and transported only within that State.

The Department of Justice recommends enactment of this legislation if amended as suggested above.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General

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In its mandate to the states to control waste, fraud and abuse, Congress certainly did not intend to damage the very programs it sought to preserve. Yet, this will be the effect if sanctions are imposed: either benefits will be reduced or administration will be cut back. In either event, everyone loses. Lower benefits endanger orderly family life. Reduced administrative funds result in higher error rates.

Tennessee has long resisted the imposition of fiscal sanctions as a technique to curb waste, fraud, and abuse. It is our position that improvement in this area would be much more effective if states were provided fiscal incentives for exemplary performance. Nevertheless, if there is to be a sanction system, it must be a fair, accurate and reasonable one. The existing quality control system is none of the above. This is not only the view of a state that is facing such sanctions; this review also reflects Health and Human Services' own internal, but unpublished, analysis of the Quality Control System:

Let me list for you some of the System's many shortcomings:

It is untimely. States are unable to take rapid corrective action. Our case review findings for April, 1982, are not yet certified by Health and Human Services. The $1.8 million sanction peresently being assessed dates from April, 1980—over five years ago!

The quality and skill of Quality Control staff vary from state-to-state.

There is an upward and downward range of reliability in error rate computation, and the Quality Control System imposes the highest possible range on the states.

Technical errors, such as children having no social security number or falling to register for work when not attending school, are considered as significant as willful misrepresentation.

Client-caused errors, over which states have little control such as unreported income or resources, count as much as state-caused administrative errors. In fact, for the year in question, client-caused errors made up over two-thirds of Tennessee's 8.9% error rate.

The error rate tolerance level is arbitrary. Presently it is set at 3%, which is arrived at completely arbitrarily. We know of no government agency or private sector opertion capable of operating at a 97% accuracy level.

The Quality Control System does not take into account economic conditions, geographic conditions, or program differences.

Simply stated, it is neither a fair nor an adequate system upon which to set in motion a plan that will reduce over a billion dollars in benefits to needy children and adults over the next few years. I urge you and all members of Tennessee's Congressional delegation to either sponsor or support legislation which would require Health and Human Services to conduct an empirically valid study of quality control in the AFDC program; estalablish a reasonable error tolerance level; eliminate the inequitable sanction process; and establish a moratorium on the system now in place.

Sincerely,

MARGUERITE W. SALLEE,
Commissioner.

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. KERRY, Mr. HOLLINGS, Mr. DECONCINI, Mr. CRANSTON, Mr. CHAFEE, Mr. D'AMATO, and Mr. METZENBAUM):

S. 1362. A bill to prohibit the use of the mails to send dangerous martial arts weapons; to the Committee on the Judiciary.

BAN ON SALE OF DANGEROUS MARTIAL ARTS WEAPONS BY MAIL

Mr. KENNEDY. Mr. President, today I am introducing legislation to prohibit mail-order sales of dangerous martial arts weapons. This legislation is needed to close a loophole in Federal law that frustrates enforcement of State laws applicable to martial arts weapons and to halt the increasing use of the mail to send these weapons.

The sale and distribution by mail of dangerous martial arts weapons that are outlawed or regulated by many States is a growing problem affecting the health and safety of citizens throughout the country, especially young people. For example, many States have recently enacted laws that specifically prohibit manufacturing, carrying, selling, or possessing certain martial arts weapons. However, razor-sharp throwing stars, kung fu killing sticks, known as nunchakus, and fighting chains, which are all designed to maim or kill other human beings and which are often available for as little as $10 or less, continue to be shipped through the U.S. mail.

The distribution of these illegal devices goes unchecked because existing Federal postal regulations—which prohibit the mailing of certain firearms, explosives, switchblades, and other dangerous articles—do not yet specifically prohibit sending martial arts weapons through the mail. Legislation is needed to provide the U.S. Postal Service with explicit authority to stop mail-order sales of these weapons to States which outlaw or regulate their use.

The surge in popularity of martial arts has led many States to enact legislation to keep dangerous martial arts paraphernalia out of the hands of children. The Consumer Product Safety Commission estimates that in the last 5 years, over 100,000 martial arts-related injuries of all kinds were treated in hospital emergency rooms. Over 60 percent of the victims were between the ages of 5 and 24. The easy access of children and youth gangs to inexpensive mail-order martial arts weapons, now advertised in a variety of publications, undoubtedly contributes to a substantial number of the accidents and attacks that now occur outside legitimate, supervised sports activity. In Massachusetts, for example, one martial arts instructor reports recently confiscating 100 illegal weapons from children as young as 8. Parents, educators, police, and State and local officials have written to me about the need to cut off the flow of these mail-order weapons to children.

In addition, the increasing use of martial arts weapons by criminals is a growing threat to public safety that warrants immediate action. A recent nationwide survey found a small but significant number of convicted felons who admitted using martial arts weapons to commit violent crimes. News reports strongly suggest that the number of robberies, assaults, murders, and other crimes involving martial arts weapons is growing, and there have been numerous attacks on police officers with these deadly weapons.

The legislation that I am introducing provides a direct and simple remedy for the problem. The bill amends the current criminal ban on mailing dangerous items contained in 18 U.S.C. 1716, by adding certain clearly specified martial arts weapons to the existing list of nonmailable dangerous items, and prohibits mail-order sales to States which have banned the items. The Postal Service may prescribe regulations for mailing otherwise nonmailable martial arts weapons to the Armed Forces, National Guard, police, and to a State in which the sale or transfer itself would be legal under the law of such State. In addition, the bill is expressly inapplicable to any knife, sword, or ceremonial or collector's weapon that is otherwise mailable under 18 U.S.C. 1716.

This approach involves a modest but important revision of existing law that will reduce the availability of these lethal weapons to unsupervised children, gangs, and criminals, without inhabiting legitimate martial arts or other sports and hobbies. Indeed, some martial arts enthusiasts, concerned about the public safety and the undeserved reputation that illegal weapons give their sport, have joined law enforcement officials in urging this legislation.

I ask that the text of the bill and a survey of State statutes applicable to martial arts weapons be printed in the RECORD at this point. The survey was prepared by Paul L. Morgan, legislative attorney of the Congressional Research Service's American Law Division. I also ask that recent news articles addressing this issue may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1363

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1716 of title 18, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i); and

(2) inserting after subsection (g) the following new subsection:

"(h)(1) Whoever—

"(A) knowingly deposits for mailing or delivery, or

"(B) knowingly causes to be delivered by mail, any dangerous martial arts weapon, and thereby sells or transfers, or attempts to sell or transfer such weapon to any person in a state which prohibits manufacturing, selling, carrying, or possessing, such dangerous martial arts weapon, shall be fined not more than $1,000 or imprisoned not more than one year or both.

"(2) Dangerous martial arts weapons may be conveyed in the mails under such regulations as the Postal Service shall prescribe—

"(A) to civilian or Armed Forces supply or procurement officers and employees of the

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Federal Government ordering, procuring, or purchasing such weapons in connection with the activities of the Federal Government;

"(B) to supply or procurement officers of the National Guard, the Air National Guard, or militia of a State, Territory, or the District of Columbia ordering, procuring, or purchasing such weapons in connection with the activities of such organizations;

"(C) to supply or procurement officers or employees of the municipal government of the District of Columbia or of the government of any State or Territory, or any county, city, or other political subdivision of a State or Territory, ordering, procuring, or purchasing such weapons in connection with the activities of such government;

"(D) to manufactures of such weapons or bona fide dealers therein in connection with any shipment made pursuant to an order from any person designated in subparagraphs (A), (B), and (C); and

"(E) to a person or business in a State in which a sale or transfer would be legal under the laws of such State.

The Postal Service may require, as a condition of conveying any such weapon in the mails, that any manufacturer or dealer proposing to mail such weapon explain in writing to the satisfaction of the Postal Service that the mailing of such weapon will not be in violation of this section.

"(3) For the purposes of this subsection, the term "dangerous martial arts weapon" means—

"(A) A nunchaku, also known as klackers, kung fu sticks, or similar weapons consisting of two sticks of wood, plastic, or metal connected at one end by a length of rope, chain, wire, or leather;

"(B) a shuriken or similar pointed star-like object intended to injure a person when thrown;

"(C) a manrikigusari, also known as a fighting chain, or similar weapon consisting of a length of chain having weighted ends.

"The term dangerous martial arts weapon does not mean any knife, sword, or ceremonial or collector weapon that is otherwise mailable under this section."

"(3) inserting at the end of new subsection (i):

"This subsection shall not apply to subsection (h) concerning dangerous martial arts weapons."

STATE REGULATION OF CERTAIN MARTIAL ARTS IMPLEMENTS

With the relatively recent popularity of martial arts television programs and motion pictures, there has arisen a corresponding popularity in the possession and use of certain implements identified with the marital arts. While these devices may be used in legitimate exercises, their ancient and intended martial arts uses were as weapons, particularly the nunchaku[1] and the shuriken.[2] Use or possession of one or both of these contrivances have been statutorily regulated in at least eleven states.[3] The statutes found range from outlawing the possession or manufacture of nunchaku[4] to merely prohibiting elementary or secondary school students under the age of twenty-one years from knowingly carrying nunchaku or shuriken onto public or private elementary or secondary school premises.[5]

Absent a legislative determination to the contrary, reported decisions indicate that state courts have not found nunchaku to be a dangerous or deadly weapon per se, thus, mere possession or possession in a public place, open or concealed, is not a criminal offense.[6] In some jurisdictions, intent to use nunchaku unlawfully against another must be proven before possession or carrying the instrument is unlawful[7] while, interestingly enough, in another state the mere possession of nunchaku is illegal while intent to use the shuriken unlawfully against another must be shown before possession is illegal.[8] Another jurisdiction prohibits the carrying, possession or attempt to use against another "the so. called 'Kung-Fu' Weapons."[9] Even when regulated, there may be specific exceptions in the statutes authorizing use of the implements in martial arts exercises.[10]

PAUL L. MORGAN,
Legislative Attorney,
American Law Division.

MAY 10, 1985.

FOOTNOTES

[1] Also known as nunchaku sticks, zoo bow, klackers, kung fu sticks, chuka stick, nun chuahka, and nunchuck, this instrument consists of two sticks of wood, about a foot long, hinged end to end by a short cord, rope, wire or chain so as to allow freedom to swivel. Said to have originally developed in Southeast Asia, its form recalls a small agricultural flail and by holding one of the sticks, a karate student can swing or twirl the freely moving part in patterns or can bring both sticks together in the fashion of a nutcracker. *Commonwealth* v. *Adams*, 245 Pa. Super. 431, 369 A.2d 479 (1976). See also: Comment, "Criminal Law—Weapons—Prohibition of Karate instruments." 45 *Tennessee Law Review* 758 (Summer 1978).

[2] Also known as a throwing star, death star, shirken and kung fu star, this instrument has been defined as "a disk having sharp radiating points or any disk shaped bladed object which is hand-held and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense." *Colorado Revised Statutes* (Supp. 1984) § 18-12-106(e).

[3] Arizona, California, Colorado, Kentucky, Maryland, Massachusetts, New York, Oregon, Rhode Island, Virginia, and Washington. Statutes set forth in Appendix II.

[4] E.g., *Arizona Revised Statutes* (Supp. 1984-1985) §§ 13-3101, 3102.

[5] *Revised Code of Washington Annotated* (supp. 1985) § 9.41.280.

[6] *State* v. *Muliufi*, 64 Hawaii 485, 643 P.2d 546 (1982); *People* v. *Tate*, 68 Ill. App. 3rd 881, 386 N.E. 2d 13 (1981); *People* v. *Malik*, 70 Mich. App. 133, 245 N.W. 2d 434 (1976); *Commonwealth* v. *Adams*, 245 Pa. Super. 431, 369 A.2d 479 (1976).

[7] E.g., *Oregon Revised Statutes* (Supp. 1981) § 166.220.

[8] See: *New York Penal Law* (McKinney, 1984-1985) § 265.01 with Hechtman's Supplementary Practice Commentaries as postscript.

[9] *General Laws of Rhode Island* (Supp. 1983) § 11-47-42. If intended to apply to nunchaku, the use of the term "Kung Fu weapons" may be incorrect. "Nunchaku" comes from a Japanese word for "flying sticks" and is a weapon used by karate practioners while Kung Fu, generally thought to be an unarmed defensive form of martial arts, is of Chinese origin. See generally: Comment, note 1 supra, at 758, 769 fn 58.

[10] E.g., *California Penal Code* (West 1985) § 12020; *Colorado Revised Statutes* (Supp. 1984) § 18-12-106.

APPENDIX I: STATE CRIMINAL STATUTES SPECIFICALLY REGULATING MARTIAL ARTS IMPLEMENTS

States	Simple possession[1]	Concealed weapon	Manufacturing
Arizona	N[2]		N
California	N[2,3]		N[2,3]
Colorado	N[2,3,4]		
Kentucky		N,S	
Maryland		N	
Massachusetts	N[4,3,4]		N,S
New York	N,S[4]		
Oregon	N[4]	N[4]	
Rhode Island	[7]	[7]	
Virginia		N,S	
Washington	N[4,3,4]		

[1] Not including statutes precluding certain classes of individual from possessing weapons, e.g., ex-convicts, felons, marital patients. See: e.g., Arizona Revised Statutes (Supp. 1984-85) § 13-3101, subsection 5, infra in Appendix II.

[2] Martial arts school or demonstration exception.

[3] May not possess in a public place unless part of martial arts demonstration.

[4] Carrying on person or in vehicle prohibited.

[5] Must have intent to use unlawfully.

[6] Merely carrying with intent to use unlawfully.

[7] "Kung Fu" weapons.

[8] Possession on elementary or secondary school grounds by student under 21 prohibited.

Note.—N = Nunchaku; S = Shuriken.

APPENDIX II: TEXT OF STATE CRIMINAL STATUTES SPECIFICALLY REGULATING MARTIAL ARTS IMPLEMENTS

[Omitted in RECORD.]

[From the Washington Times, June 10, 1985]

NINJA IMITATORS

The Ninja, an ancient martial arts assassin, is apparently the latest hero for street kids, much as Superman was some years back. The black-hooded Ninja imitators may often be seen practicing karate kicks, but sometimes, thanks to mail-order magazines, they come complete with combat weapons such as nunchakus, throwing stars, and even Samurai swords.

Police, community leaders, psychologists and professional karate instructors are attempting to deal with the problem, which came to public attention after incidents in several New York state locations. A university psychologist says the behavior of youths who dress up and act the parts of Ninjas has become commonplace; incidents involving the police have raised public awareness of the problem.

John Northman, a clinical psychologist at the State University of New York at Buffalo, said there is "a tendency for kids to identify . . . with those who are powerful," however, this particular fad is "different from kids playing cowboys and Indians because it's directly threatening to others."

[From the Morning Union, June 10, 1985]

NINJA IMITATORS WORRY AUTHORITIES

BUFFALO, NY.—The Ninja warrior, an ancient martial arts assassin glamorized in books and karate movies, has become the new super hero for many young people, much the same as Superman was for their parents.

But unlike the caped crusader, the modern-day street Ninja, complete with nunchakus, throwing stars, and sometimes-menacing Samurai swords, poses problems for the forces of law and order.

Police, community leaders, psychologists and professional karate instructors are trying to deal with the problem, which came to public attention after incidents in Buffalo and Dunkirk, a city of 15,000 residents about 50 miles southwest of Buffalo.

"It's getting to be a hassle in the streets," said John Overton, a professional karate instructor in Buffalo.

"Most everybody tries to put it under the rug, but it's an ongoing problem," said Sgt. T.P. Kulig of the Dunkirk Police Department.

Kulig investigated an incident last October in which a 14-year-old boy dressed as a Ninja warrior and carrying nunchakus—also known as chucka sticks, traditionally oak sticks connected with leather or a chain—threatened a police officer with a sword.

Police said the youth, who was arrested, was part of a group whose members dressed in black and extorted money from other youths. His case has been referred to Chautauqua County Family Court.

Youngsters have been seen with hoods practicing kick routines, but few have been seen with weapons and police have received few reports of attacks, Kulig said.

But tragedy struck May 23 when Buffalo police shot and killed a man who attacked two officers with a 29-inch Samurai sword. Police said they had gone to the home of

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